IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

FAO.No. 158 of 2004()

AGAINST THE ORDER IN IA.NO.1350/04 IN OS.NO.14/04 OF DISTRICT COURT, ERNAKULAM.

APPELLANT/PETITIONER IN IA/PLAINTIFF:

ALL KERALA PHOTOGRAPHERS ASSOCIATION
REG.NO.ER 15/85, C.C.16/831, THOPPUPADY,
KOCHI-5, REPRESENTED BY ITS STATE SECRETARY
SRI.T.J. VARGHESE.

BY ADV. SRI.P.SANJAY

RESPONDENTS: RESPONDENTS IN IA/DEFENDANTS:

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1. ALL KERALA VIDEO AND PHOTOGRAPHERS ASSOCIATION, VITOP COMPLEX, MAHAKAVI BHARATIYAR ROAD, ERNAKULAM, REPRESENTED BY ITS SECRETARY.

2. K.V. SANTHOSH, STATE GENERAL SECRETARY
ALL KERALA VIDEO AND PHOTOGRAPHERS ASSOCIATION
VITOP COMPLEX, MAHAKAVI BHARATIYAR ROAD,
ERNAKULAM.

3. JOSEPH SARDHO K.D., CHIEF CO-ORDINATOR,
THE PHOTOSHOW, ALL KERALA VIDEO AND PHOTOGRAPHERS ASSOCIATION, VITOP COMPLEX, MAHAKAVI BHARATIYAR ROAD, ERNAKULAM.

4. UPENDRA NATH PRABHU, GENERAL CONVENOR
THE PHOTOSHOW, ALL KERALA VIDEO AND PHOTOGRAPHERS ASSOCIATION, VITOP COMPLEX
MAHAKAVI BHARATIYAR ROAD, ERNAKULAM.

BY ADV. SRI.M.K.DILEEPAN

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 28/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

F.A.O.No. 158 of 2004

Dated this the 28th June, 2007.

J U D G M E N T

The plaintiff-petitioner in I.A.No.1350/2004 in O.S.No.14/2004, on the file of the District Court, Ernakulam, is the appellant. The appellant filed a suit under the provisions of Trade Marks Act, alleging that respondents were trying to exhibit a logo during Trade Fair, which was scheduled to be held on 19.5.2004 to 21.5.2004, infringing the registered trade mark of the appellant. The specific prayer was to restrain the respondents from using the logo for a limited period alone. That period is already over. So, the injunction petition has become infructuous.

2. The grievance of the appellant is that while dismissing the injunction application, the learned Judge has made many observations, which he should not have ventured to do, at that stage. It is argued that in fact the learned District Judge, without considering the evidence, has decided the fate of the suit itself. Since, the F.A.O. has become infructuous, I do not think it necessary to consider whether the respondents are entitled to use the Logo. That is

a matter to be decided in the suit. I am of the view that it is only just and proper that the Trial Court is directed to decide the suit, untrammeled by any observations made by it, in the injunction order, but strictly on the basis of the evidence to be adduce, before that Court.

In the result, the appeal is disposed of with a direction to the District Court, Ernakulam, to dispose of the suit, untrammeled by any observations made in the order dated 21.5.2004, in I.A.No.1350/2004, in O.S.No.14/2004.

K.PADMANABHAN NAIR,
JUDGE

nj.